



STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)
)
 MARGARET M. BEST,)
)
 Complainant,)
)
 and)
)
 ALLSTATE INSURANCE COMPANY)
 and JACK READICKER,)
)
 Respondents.)

CHARGE NO: 1999SF0730
EEOC NO: 21B992287
ALS NO: S-11269

RECOMMENDED ORDER AND DECISION

This matter comes to me on a motion by Respondents, Allstate Insurance Company and Jack Readicker, to dismiss this case for want of prosecution. Complainant has not filed a response to this motion, although she was given an opportunity to do so.

Contentions of the Parties

Respondents contend that dismissal of this case is warranted because Complainant has repeatedly failed to respond to discovery requests tendered over two years ago and has failed to comply with certain Commission orders directing her to do so.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. On June 14, 1999, Complainant filed a Charge of Discrimination against Respondents, Allstate Insurance Company and Jack Readicker, alleging that she was the victim of sexual harassment and retaliation.
2. On May 19, 2000, the Department of Human Rights filed a Complaint against Respondents on behalf of Complainant, alleging that Complainant was the victim of sexual harassment and retaliation.

3. At all times pertinent to this Complaint, Complainant was acting *pro se* on her own behalf.

4. On June 23, 2000, an Order was entered which established a July 21, 2000 deadline for filing initial discovery requests, and an October 20, 2000 deadline for filing supplemental discovery requests.

5. On July 18, 2000, Respondents served Complainant with a set of interrogatories and requests for production of documents.

6. When Complainant failed to submit her answers to the interrogatories and requests to produce, Respondents filed a motion to compel on October 13, 2000. In the motion, counsel for Respondents attached a series of letters sent to Complainant seeking compliance with the discovery requests, as well as an offer to consider a settlement of the case.

7. Although Complainant did not file a formal response to the motion to compel, she did tender copies of correspondence sent to Respondents' counsel that rejected Respondents' offer to settle, but made a counteroffer with certain conditions, including Complainant's assurance that she would never go "to the media with this."

8. On November 2, 2000, Respondents' motion to compel was granted, and Complainant was given until November 27, 2000 to file a response.

9. On December 12, 2000, Respondents filed a motion to dismiss this case for want of prosecution, citing Complainant's failure to serve responses to all outstanding discovery requests and her failure to contact Respondents' counsel regarding her responses.

10. Complainant did not file a response to the motion to dismiss, but on March 7, 2001, counsel for Respondents sent the Commission a letter indicating that the parties had settled the case. On March 9, 2001, an Order was entered which required that the parties either submit a proposed settlement agreement or a motion to voluntarily dismiss by April 9, 2001.

11. On March 16, 2001, the Commission received correspondence from Complainant indicating, among other things, that the matter had not been settled under the terms of the proposed settlement agreement drafted by Respondents' counsel. On March 23, 2001, an Order was entered which requested Respondents' counsel to file a report on the matter.

12. On March 29, 2001, Respondents filed a motion seeking immediate consideration of their motion to dismiss, arguing that Complainant had not responded to the November 2, 2000 Order compelling her to serve responses to outstanding discovery requests. Respondents further maintained that the parties were unable to reach a final agreement.

13. On April 3, 2001, Complainant sent the Commission a copy of a letter she sent to a Department of Human Rights investigator indicating that: (1) although she received a copy of Respondents' discovery requests, she was not going to "waste her valuable time" and respond to the discovery requests because she had previously answered similar questions posed by the Department of Human Rights. She further indicated that she had incurred some medical setbacks in November and December 2000.

14. On April 10, 2001, Complainant was directed to file a response to Respondents' motion for immediate consideration of their motion to dismiss. The Order further directed Complainant to provide medical documentation to support her assertion that her medical condition prevented her from serving responses to the outstanding discovery requests.

15. On April 24, 2001, Complainant filed a response to the motion for immediate consideration of Respondents' motion to dismiss. In her response, Complainant again insisted that she was not going to file responses to the discovery requests because Respondents "have had all the information that they need for discovery for months[,] [and that Respondents' counsel] are just too lazy to have their junior staff put it into the fill-in-the-

blanks format". (Emphasis in original.) Complainant also supplied a medical slip indicating that Complainant had been hospitalized from January 5 through January 29, 2001, and that Complainant required several weeks of home health care thereafter.

16. On May 4, 2001, Respondents filed a reply to Complainant's response, and on May 7, 2001, Complainant filed a sur-reply, again indicating that Respondents had already had the information it sought, that she would not be doing "paperwork" that the staff for Respondents' counsel should be doing, but that she might consider answering the discovery requests if Respondents would be willing to pay her the going hourly rate for secretarial staff.

17. On May 14, 2001, Dr. Lohse sent a note to the Commission indicating that Complainant had cataract surgery on her eyes in November and December of 2000.

18. On May 24, 2001, an Order was entered which denied Respondents' motion to dismiss given Complainant's medical problems and the existence of a temporary settlement. The Order, however, directed Complainant to respond to all outstanding discovery requests on or before June 15, 2001, and further cautioned Complainant that: (1) she must respond to the discovery request even if she believed that Respondents already knew the answer; (2) she must respond to the outstanding discovery requests without the requirement that Respondents pay her for doing so; and (3) should she fail to comply with the Order she risked the entry of an Order recommending that the case be dismissed with prejudice for want of prosecution.

19. On June 20, 2001 the Commission received a note from Complainant's physician indicating that Complainant was hospitalized from June 6, 2001 through June 13, 2001, and that she would need several weeks of convalescence.

20. On June 25, 2001, Respondents filed another motion to dismiss the case for want of prosecution based on the fact that Complainant had not served responses to outstanding discovery requests by the June 15, 2001 deadline set forth in the May 24, 2001 Order.

21. Complainant did not file a response to the motion to dismiss, but did file on July 17, 2001 a letter seeking the status of her case. In the letter, Complainant also wanted the Commission to send her any discovery documents that Respondents sent to her since, according to Complainant, she apparently lost Respondents' discovery requests "in the course of my recent hospitalization and trying to break in a new housekeeper."

22. On July 17, 2001, an Order was entered which held the motion to dismiss in abeyance and further directed Complainant to provide Respondents with responses to the outstanding discovery requests by August 8, 2001 and to contact Respondents' counsel if she was unsure of whether she still had copies of the outstanding discovery requests. The Order again cautioned that Complainant's failure to comply with the deadline for serving responses placed her at risk for entry of an order dismissing this case for want of prosecution and precluded her from blaming the "new housekeeper" as a reason for not serving future responses to outstanding discovery requests.

23. On August 8, 2001, the Commission received a letter from Complainant essentially asking for more time to comply with the Order of July 17, 2001. Specifically, the request reads as follows:

On July 18[,] I received correspondence from you saying the new date for me to send in discovery was on or before August 8, 2001. That date is tomorrow. My letter to you that prompted this date of Aug 8 clearly stated that in the course of my hospitalization/illnesses the discovery forms had been lost. In that letter I SPECIFICALLY asked you to have new forms sent to me so that I could attempt to fill them out. I have watched the mail for them every single day. To date they have not arrived. They are due tomorrow. Once again I am unable to comply. Once again through no fault of my own. Please set a new date. And please make sure that the blank fill-in-the blanks discovery forms get here. And once here give me a fair amount of time to fill them out. Thank you in advance, Margaret Mylia Best P.S. I will continue to watch the mail every day for the forms. (Emphasis in original.)

24. On August 13, 2001, Respondents filed a motion to dismiss for want of prosecution, citing the history of Complainant's failure to comply with Commission orders and her recent failure to comply with the July 17, 2001 Order.

25. On August 17, 2001, I conducted a telephone conference regarding the parties' recent pleadings. During the conference, I asked Complainant why she believed that she would be receiving discovery documents from the Commission when she was instructed in the July 17, 2001 order to contact Respondents' counsel for copies of discovery requests that she did not have. Complainant responded that she believed she was not required to contact Respondents' counsel because of the expense involved and because she believed Respondents' counsel had been rude to her in the past.

26. On August 17, 2001, an Order was entered, which: (1) granted Complainant's request for an extension of time to serve discovery responses to September 7, 2001; and (2) held Respondents' motion to dismiss in abeyance. The Order also warned Complainant that the failure to comply with the Order risked the entry of an Order dismissing the case with prejudice.

27. On August 18, 2001, the Commission received a letter from Complainant asking that Judge Robinson be removed from the case due to an alleged arbitrary and capricious attitude on his part during the August 17, 2001 telephone conference call.

28. On September 5, 2001, the Commission received a letter seeking an extension of time from the September 7, 2001 due date for responding to discovery requests due to that fact the post office only delivered the discovery requests from Respondents' counsel on August 30, 2001. Respondents filed an objection, noting Complainant's history of non-compliance with Commission orders and citing a copy of the letter indicating that the discovery material had been sent via certified mail on August 17, 2001.

29. On September 7, 2001, an Order was entered which granted Complainant's motion for an extension of time and gave Complainant until September 17, 2001 to serve responses on all outstanding discovery requests.

30. On September 11, 2001, Complainant sent a letter to Judge Robinson and to Chief Administrative Law Judge Larson regarding the status of her case. In the letter,

Complainant indicated that the September 17, 2001 deadline for serving responses to discovery requests was “unacceptable” because: (1) she had received copies of previously tendered discovery requests on August 30, 2001; and (2) she had unspecified plans for August 31, 2001, as well as for the September 1 through 3, 2001 Labor Day weekend. Complainant further indicated that she would not be taking any other action on the case until she heard from Chief Administrative Law Judge Larson on her motion to assign another administrative law judge to this case.

31. On September 21, 2001, Respondents filed another motion to dismiss this case for want of prosecution. Respondents thereafter filed a brief in support of its motion on October 25, 2001.

32. On July 29, 2002, the motion to remove Judge Robinson from the case was denied.

33. On August 14, 2002, Complainant was given until September 20, 2002 to file a response to Respondents’ motion to dismiss the case for want of prosecution and supporting brief.

34. As of the date of this Order, Complainant has not filed either a response to the motion to dismiss or a proof of service indicating that she served Respondents with responses to outstanding discovery requests.

Conclusions of Law

1. Complainant is an “employee” as that term is defined under the Human Rights Act.

2. Respondent Jack Readicker is an “employee” as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

3. Respondent Allstate Insurance Company is an “employer” as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

4. A complaint may be dismissed when a party fails to substantially comply with any order entered under 56 Ill. Admin. Code, Ch. XI, Sec. 5300.720 concerning compliance with discovery, or otherwise engages in conduct which unreasonably delays or protracts proceedings.

5. An administrative law judge may issue a recommended order dismissing a case with prejudice as a sanction for the failure of a party to prosecute his or her case, file a required pleading, or otherwise comply with the terms of the Human Rights Act, the rules of the Commission or a previous order. 775 ILCS 5/8A-102(I)(6).

5. Complainant failed to substantially comply with Respondents’ discovery requests as required by procedural rules and by Orders entered in this case.

6. Complainant has unreasonably delayed and protracted the proceedings in this matter.

Determination

The Complaint in this matter should be dismissed with prejudice due to Complainant’s failure to either prosecute this action in a diligent manner or comply with Orders entered in this case concerning discovery.

Discussion

Section 5300.750(e) of the Commission’s Procedural Rules (56 Ill. Admin. Code, Ch. XI, §5300.750(e)) permits a recommendation of dismissal whenever a party engages in conduct that unreasonably delays the proceedings. In this regard, the Commission has previously found that a party’s failure to provide discovery responses or abide by Commission orders directing responses to outstanding discovery requests can constitute unreasonable delay for purposes of issuing sanctions under section 5300.750(e). (See, for

example, Crawford and Aramark Uniform Services, Inc., ___ Ill. HRC Rep. ___ (1997SF0122, September 30, 1998.) Indeed, Illinois courts, in noting the importance of discovery obligations in civil litigation, have become less tolerant of violations of discovery orders, even at the expense of deciding a case on the basis of the sanction imposed, rather than on the merits of the litigation. See, Shapira v. Lutheran General Hospital, 199 Ill.App.3d 479, 557 N.E.2d 351, 356, 145 Ill.Dec. 581, 586 (1st Dist., 2nd Div., 1990).

Here, Respondents argue that dismissal of this case is warranted since it has been over two years since they have served Complainant with a set of written discovery requests and have yet to receive a response. They similarly submit that Complainant's conduct can only be viewed as contumacious behavior given the existence of five separate Commission Orders dated November 2, 2000, May 24, 2001, July 17, 2001, August 17, 2001 and September 7, 2001 directing her to serve responses to discovery requests and her continued refusal to do so. Finally, Respondents contend that Complainant's refusal to tender responses to outstanding discovery requests has been willful in view of the nature of her excuses for failing to comply with Commission Orders, as well as Complainant's misguided belief that her personal and social plans have priority over her longstanding obligation to serve discovery responses.

After reviewing the pleadings, I agree with Respondents that the time has come to dismiss this case for want of prosecution. Specifically, while the initial delays in the Fall of 2000 and the Spring of 2001 in answering outstanding discovery requests can be explained by Complainant's health and the existence of settlement negotiations between the parties, Complainant has no real explanation for her inability to tender responses to discovery in the Summer and Fall of 2001. Indeed, as noted in the Order of July 17, 2001, most of the earlier motions to dismiss this case could have been avoided had Complainant made a simple telephone call to Respondents' counsel and explained that her physical ailments prevented her from making timely submissions of responses to discovery requests. Although

Complainant indicated both in her correspondence to the Commission and in her telephone conference call that she would not and should not have to contact Respondents' counsel because of her perception that Respondents' counsel was rude to her, Complainant's perceptions of rudeness cannot trump Commission practice that requires parties to consult with each other when encountering discovery problems. See, Order of June 23, 2000.

Yet, Complainant's failure to provide timely responses to discovery requests based on her perception regarding the rudeness of Respondents' counsel is only part of the problem here. Specifically, from mid-July, 2001 to the present, Complainant has not reported any medical reason which would have prevented her from responding to discovery requests. Moreover, Complainant's other excuses, including Respondents' failure to pay her for her time in responding to the discovery responses, the housekeeper, and the Commission's failure to send Respondents' discovery requests to her in spite of specific instructions directing Complainant to contact Respondents' counsel, improperly neglect her obligation to provide responses to discovery requests and border on being frivolous. Additionally, this pattern of blaming others for her failure to serve discovery requests continued in August and September of 2001, when according to Complainant, the postman, unspecified social obligations and the Labor Day Weekend were to blame for her failure to serve discovery responses. In this regard, I agree with Respondents that a *pro se* litigant's social obligations cannot take precedence over discovery requests that had been pending for over a year.

But even with these excuses, Complainant was given until September 17, 2001 to serve responses to outstanding discovery requests. Instead of complying with the September 17, 2001 deadline for serving legitimate discovery requests, Complainant filed a request for removal of the administrative law judge and made a unilateral decision not to comply with any discovery requests until the motion for removal had been resolved. Even then, after the motion for removal had been denied, Complainant made no apparent attempt to serve discovery responses and failed to comply with the Order of August 14, 2002

requiring her to file a response to the most recent motion to dismiss. Under these circumstances, Complainant's inaction can only be viewed as an indication either that she no longer cares about pursuing her claim, or that she agrees with Respondents' contention that this matter should be dismissed. In any event, Complainant's conduct renders it difficult for the Commission to take any action with regard to this case except to dismiss it. See, **Forrest and Denny's**, ___ Ill. HRC Rep. ___ (1995SF0700, October 4, 1999), where the Commission similarly upheld a recommendation to dismiss a case based on complainant's failure to respond to either outstanding discovery requests or to a pending motion to dismiss the case for want of prosecution.

Recommendation

For all of the above reasons, it is recommended that the Complaint and the underlying Charge of Margaret M. Best be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 26TH DAY OF FEBRUARY, 2003